



JUDICIAL SYSTEM MONITORING PROGRAMME
PROGRAMA MONITORIZASAUN SISTEMA JUDISIÁL

Case Summary

**Summary of the trial process at the Baucau District Court
Period: February 2013**

Introduction

In February 2013 JSMP continued its monitoring activities at the Baucau District Court (BDC). Previously, in January 2013 JSMP did not publish a Case Summary from the BDC because the court only started carrying out its work in the middle of the month and the JSMP staff who were responsible for monitoring the BDC were pursuing other activities in Dili.

During February 2013 JSMP monitored 18 cases. They were 5 cases of domestic violence, 3 cases involving the sexual abuse of a minor, 1 case of rape, 1 case of incest, 3 cases involving a simple offence against physical integrity, 1 case of minor damage, 2 cases of a crime against flora and fauna, and 1 case of aggravated theft. In addition, there was 1 case involving a land dispute.

In most of these cases a final decision was issued which generally constituted a suspended prison sentence. Suspended sentences were handed down in 5 cases of domestic violence and 1 case of sexual violence. Another 2 cases were validated by the court and the others are still being processed because the parties did not attend court and because of other procedural reasons.

The information below outlines the hearings conducted:

1. Domestic Violence, Case No. 100/Crm.S/2012/TDB.

Baucau District Court

Judge Composition	: Single
Judge	: António Fonseca Monteiro
Public Prosecutor	: Adérito Tilman
Public Defender	: Gil Amaral (trainee lawyer)
Conclusion	: Court issued a suspended sentence

This matter was tried by the court on 6 February 2013 in a hearing scheduled to examine the evidence. However after this stage was completed the court immediately read out its final decision in this case. The case was registered with the court as Case No. 100/Crm.S/2012/TDB. The defendant in this case JDS allegedly committed the crime against the victim AMFC on 28 November 2011 in Ma'abat Village, Manatuto Sub-District, Manatuto District.

The public prosecutor accused the defendant of committing the crime of a simple offence against physical integrity as set out in Article 145 of the Penal Code together with Articles 2 and 3 of the Law Against Domestic Violence.

The public prosecutor alleged that on 28 November 2011 the defendant forcefully dragged the victim into the house and hit the victim above her left eye. The aforementioned action caused the victim to suffer an injury and swelling above her eye. In his indictment the prosecutor stated that this case allegedly occurred because the victim questioned the defendant who had left the house and slept at his brother's house without the knowledge of the victim.

The defendant acknowledged that all of the facts alleged by the public prosecutor were true. However the defendant responded that he committed the aforementioned acts because the victim verbally abused the parents of the defendant. Nevertheless, the defendant expressed regret for his actions.

In her testimony the victim confirmed that the defendant committed the aforementioned acts because she had verbally abused the parents of the defendant.

After hearing the testimony of the defendant and the victim, the court proceeded to hear the final recommendations verbally. The public prosecutor verbally requested for the court to punish the defendant in accordance with his actions.

The public defender requested for the court to give justice to his client because the defendant had admitted his actions and expressed regret for the assault carried out by the defendant which was provoked by the victim.

Based on the aforementioned facts the court concluded the case and sentenced the defendant to four months imprisonment to be suspended for 6 months.

2. Crime of incest, Case No. 148/Crm.C/2012/TDB.

Baucau District Court

Judge Composition	: Panel
Judges	: António Fonseca Monteiro, Ângela Faria Belo and José Gonçalves
Public Prosecutor	: Baltazar Ramos
Public Defender	: Sergio Paulo Dias Quintas and Dr. Gil Amaral (Trainee Lawyer)
Conclusion	: Court issued a suspended sentence

The court tried this case on 6 February 2013. This case involved a crime of serious sexual abuse in the form of incest which was committed by the defendant SL against his own child. This case was registered with the court as Case No. 148/Crm.C/2012/TDB.

The incidents allegedly occurred in October 2007 and March 2008 in Lospalos Sub-District, Lautem District.

The prosecutor charged the defendant for committing the crime of sexual abuse as set out in Article 285 of the Indonesian Penal Code and Article 173 of the Timor Leste Penal Code.

The trial was closed to the public. However, based on information obtained by JSMP from a court clerk, the defendant allegedly had sexual relations with the victim on four different occasions. After the aforementioned hearing the court then set the next hearing for 21 February 2013 to announce its final decision.

Then on 21 February 2013 the court reconvened to read out its final decision in this case.

Based on the examination of evidence carried out on 6 February 2013, the court was convinced that the defendant was guilty of committing the crime of sexual violence against the victim on three different occasions. The court believed that the incidents occurred in October 2007 and March 2008 and that the defendant was also guilty of threatening the victim with a machete to stop the victim from informing others or screaming.

Based on the aforementioned evidence the court decided to sentence the defendant to 9 years and 6 months imprisonment.

3. Domestic Violence, Case No. 104/Crm.S/2012/TDB.

Baucau District Court

Judge composition	: Single
Judge	: António Fonseca Monteiro
Public Prosecutor	: Adérito Tilman
Public Defender	: Alixandrina de Sousa Soares (Trainee Lawyer)
Conclusion	: Suspended sentence

The court conducted a hearing in this case on 7 February 2013 to examine evidence. Nevertheless, at the same time the court proceeded to read out its decision in this case. This case was registered as Case No. 104/Crm.S/2012/BDC involving the defendant Arnaldo da Costa Soares who allegedly committed the crime against the victim Cipriana de Carvalho on 18 September 2011 in Uma Naruk Village, Lacleo Sub-District, Mantuto District.

The public prosecutor accused the defendant of committing the crime of a simple offence against physical integrity as set out in Article 145 of the Penal Code together with Article 35 of the Law Against Domestic Violence.

The public prosecutor stated that on 18 September 2011 the defendant argued with the victim and without a clear reason the defendant struck the victim on the back and left ear. The actions of the defendant caused the victim to suffer swelling and pain to her back and ear.

During the trial the defendant admitted that all of the charges were true and the defendant expressed regret for the aforementioned acts. Therefore, the court decided not to hear the testimony of the victim and the witness in this case and immediately proceeded to hear the final recommendations of the parties.

After hearing the admission of the defendant and his regret, the public prosecutor requested for the court to sentence the defendant to one month's imprisonment to be suspended for 6 months.

The public defender requested for the court to give justice to his client because the defendant had admitted the acts, expressed regret and had reconciled with the victim and was taking responsibility for his family.

For these reasons the defendant was sentenced to 3 months imprisonment to be suspended for 6 months.

4. Crime of sexual abuse of a minor, Case No. 224/Crm.C/2009/TDB.

Baucau District Court

Judge composition	: Single
Judge	: Ângela Faria Belo
Public Prosecutor	: Adérito Tilman
Public Defender	: Alixandrina de Sousa Soares (Trainee Lawyer)
Conclusion	: Trial adjourned

On 7 February 2013 the Baucau District Court did not conduct a hearing in a case involving the sexual abuse of a minor, because the defendant was not present. This case was registered as Case No. 224/Crm.C/2009/TDB. The defendant in this case NCP allegedly committed the crime against the victim AG. The incident allegedly occurred on 15 February 2002 in the town of Viqueque.

Based on information that JSMP obtained from the court, the hearing of this case was adjourned until 21 June 2013 at 10am.

5. Land dispute, Case No. 12/Civ.PI/2012/TDB.

Baucau District Court

Judge composition	: Single
Judge	: Afonso Carmona
Lawyers for the plaintiff	: Lino Lopes and Marçal Guterres
Lawyer for the respondent	: Sérgio Paulo Dias Quintas
Conclusion	: Ongoing

This matter was tried on 6 February 2013 in order to attempt to reach an amicable settlement. The case was registered with the court as Case No. 12/Civ.PI/2012/TDB.

This case involved Manuel Dos Santos Cabral as the plaintiff and Marçal Lequidara as the respondent. The dispute occurred in 2011 in Baucau.

Attempts to reach a peaceful settlement were unsuccessful. The respondent stated that he had tried many times to reconcile, however the plaintiff refused, therefore the respondent requested for the court to proceed with the trial.

At the request of the respondent the court will issue a record of the hearing and then set a date to continue the trial.

6. Domestic Violence, Case No. 05/Crm.S/2012/TDB.

Baucau District Court

Judge composition	: Single
Judge	: Afonso Carmona
Public Prosecutor	: Baltazar Ramos
Public Defender	: Rui M. Guterres
Conclusion	: Court issued a suspended sentence

The court tried this case on 12 February 2013. This case was registered as Case No. 05/Crm.S/2012/BDC involving the defendant AF and the victim EF. The incident allegedly occurred on 27 May 2011 in Uaimanube Sub-Village, Uailili Village, Baucau Sub-district, Baucau District.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding a simple offence against physical integrity as well as Article 35 of the Law Against Domestic Violence.

The prosecutor in his indictment stated that on 27 May 2011 the defendant kicked the victim in the mouth and back and hit the victim on the cheek multiple times. These acts caused the victim to suffer injuries to the mouth and back, and swelling to the left side of the mouth. This case allegedly occurred because the victim did not speak to her son in law.

In his testimony the defendant admitted that all of the charges of the public prosecutor were true, however he regretted his actions.

After hearing the testimony and admission of the defendant, the court then proceeded to hear the final recommendations. In his final recommendations the public prosecutor requested for the court to sentence the defendant with a suspended sentence.

The lawyer for the defendant requested for the court to hand down a light sentence against his client because the defendant had admitted his actions, expressed regret and has family responsibilities.

After hearing the final recommendations the court set the 26 February to announce its final decision.

After analyzing the entire process the court was convinced that the defendant was guilty of committing the crime of which he was accused.

Nevertheless, because the defendant admitted his actions and expressed regret and was a first time offender the court decided to punish the defendant with a prison sentence of 6 months to be suspended for 1 year.

7. Domestic Violence, Case No. 167/Crm.S/2012/TDB.

Baucau District Court

Judge composition : Single
Judge : Afonso Carmona
Public Prosecutor : Baltazar Ramos
Public Defender : Muzaira Amaral (Trainee Lawyer)
Conclusion : Court issued a suspended sentence

A hearing in this case took place on 12 February 2013 to read out the court's decision. This case involved the defendant Mariano do Santos who allegedly committed the crime against his wife Julieta Ximenes. This case was registered as Case No. 167/Crm.S/2012/BDC on 25 March 2011, in Quelecai, Baucau.

The public prosecutor charged the defendant for violating Article 145 of the Penal Code regarding a simple offence against physical integrity against a spouse as well as Article 35 of the Law Against Domestic Violence.

The public prosecutor stated that the defendant committed the crime of maltreatment by hitting the victim in the forehead with a piece of wood and causing the victim to suffer an injury to her forehead.

After examining the facts the court decided to sentence the defendant to one month's imprisonment to be suspended for 6 months. The court also ordered the defendant to pay court costs of \$ 20.00.

8. Crime of rape, Case No. 156/Crm.C/2008/TDB.

Baucau District Court

Judge composition : Single

Judge : António Fonseca Monteiro
Public Prosecutor : Baltazar Ramos
Public Defender : Gil Amaral (trainee lawyer)
Conclusion : Court issued a suspended sentence

A hearing in this case took place on 14 February 2013 to read out the court's decision. This case involved the defendants Albino Belo and Antonino Soares who allegedly committed the crime against the victim EL. The case was registered with the court as Case No. 156/Crm.C/2008/TDB. The sexual violence allegedly occurred on 20 November 2006 in Lacluta, Viqueque District.

The public prosecutor charged the defendants with Article 285 of the Indonesian Penal Code Indonesia and Article 173 of the Timor-Leste Penal Code.

Based on the evidence examined by the court during the trial, the court found the defendants guilty of taking turns to commit the crime of sexual violence on the evening of 20 November 2006. In addition, it was found that the victim has a mental illness. The court also found that the two defendants settled this case through traditional means and paid compensation of \$ 500.00, one buffalo and one horse.

With reference to all of the evidence and circumstances linked to the aforementioned crime and with consideration of the two different articles (the Indonesian Penal Code and the Timor-Leste Penal Code) used to charge the two defendants and the article most favorable for the defendants, the court finally decided to sentence the defendants to 3 years imprisonment to be suspended for 5 years.

9. Crime of simple offence against physical integrity, Case No. 121/Crm.S/2012/TDB.

Baucau District Court

Judge composition : Single
Judge : António Fonseca Monteiro
Public Prosecutor : Baltazar Ramos
Public Defender : Gil Amaral (trainee lawyer)
Conclusion : Validation of an amicable agreement and acquittal of the defendant

A hearing in this case took place on 14 February 2013 to try to reach an amicable settlement. The case was registered with the court as Case No. 121/Crm.S/2012/BDC involving the defendant Cosme Faria and the two victims Juaquina Aurea and Alcina Correia, regarding an alleged incident on 3 April 2011 in Vemase, Baucau District.

During the hearing to try to reach an amicable settlement the parties agreed to reconcile and end their case peacefully and to withdraw the complaint. Pursuant to this process the court validated the agreement and acquitted the defendant from the charges.

10. Crime of sexual abuse of a minor, Case No. 113/Crm.C/2012/TDB.

Baucau District Court
Judge composition : Panel
Judge : José Gonçalves, Afonso Carmona and Ângela F. Belo
Public Prosecutor : Baltazar Ramos
Public Defender : Rui M. Guterres
Conclusion : Ongoing

A hearing in this case took place on 14 February 2013 to hear testimony from the defendant, the victim and witnesses. This case involved the defendant RS and the victim FMR, regarding an incident that allegedly occurred on 10 August 2010 in Lautem, Lautem District.

The public prosecutor charged the defendant for violating Article 177 of the Penal Code regarding the sexual abuse of a minor. This trial was closed to the public. However, based on information that JSMP obtained from the court, the aforementioned hearing was convened to hear testimony from the defendant, the victim and the witness.

After hearing testimony from the parties, the court then decided to adjourn the trial until 5 March 2013 to announce its final decision.

11. Crime against Flora and Fauna, Case No. 109/Crm.S/2012/TDB.

Baucau District Court
Judge Composition : Single
Judge : José Gonçalves
Public Prosecutor : Adérito Tilman
Public Defender : Gregório de Lima.
Conclusion : Trial adjourned

On 19 February 2013 the Baucau District Court adjourned a trial involving a crime against flora and fauna that was registered with the court as Case No. 109/Crm.S/2012/TDB. This case involved two defendants EF and RAR who allegedly committed the crime against the State. The incident allegedly occurred on 7 July 2007 in Osoluca, Samalari Village, Baucau Sub-District, Baucau District.

The trial was adjourned because one of the defendants and three witnesses who had been summoned did not appear in court.

Due to this impediment the judge in this case adjourned the trial until 9 April 2013 at 2pm.

12. Crime of sexual abuse of a minor, Case No. 76/Crm.C/2012/TDB.

Baucau District Court
Judge Composition : Panel

Judges : José Gonçalves, Afonso Carmona and Ângela F. Belo
Public Prosecutor : Adérito Tilman
Public Defenders : Gregório de Lima and Gil Amaral (Trainee Lawyer)
Conclusion : Ongoing

The hearing took place on 19 February 2013 to hear final recommendations in the crime of sexual abuse of a minor which was registered as Case No. 76/Crm.C/2012/TDB.

The defendant in this case DS allegedly committed the crime against the victim EMJ on 7 March 2011 in Luro, Lautem District.

In his final recommendations the public prosecutor requested for the court to sentence the defendant to 6 year's imprisonment. This recommendation of sentence was based on the fact that the defendant had admitted the charges against him, had expressed regret and was a first time offender, and also because the defendant and the victim had settled the matter in accordance with custom and tradition, and the defendant had given 5 traditional cloths (*tais*) to the victim.

The public defender requested for the court to consider the matter and issue a light punishment because the defendant had admitted his actions, expressed regret and also because the defendant and the victim had settled their case in accordance with tradition.

After hearing the final recommendations the court adjourned the trial until 12 March 2013 at 11.00am to announce its final decision.

13. Minor Property Damage, Case No. 01/Crm.Sum/2013/TDB.

Baucau District Court

Judge Composition : Single
Judge : Afonso Carmona
Public Prosecutor : Adérito Tilman
Public Defenders : Gregório de Lima and Paulino da Costa Alves
Conclusion : Full acquittal

The hearing took place on 20 February 2013 to examine evidence regarding the crime of minor property damage. This case was registered as Case No. 01/Crm.Sum/2013/BDC and involved the defendant Zacarias da Costa and the victim Marito Reis. This case allegedly occurred on 1 February 2013 at Start Motor shop, Kota Lama, Baucau.

In their testimony, the witnesses NBX and AON (members of the Baucau District Police Operations Department) told the court that they did not see the defendants smash the window of a utility vehicle at the Start Motor Shop. However when the witnesses and their colleagues arrived at the scene they saw the defendant and five others (unknown) causing a commotion with a motorcycle. Therefore, the witnesses pursued and arrested the defendants.

After hearing the testimony of the witnesses, the court adjourned the trial until 21 February 2013 to hear testimony from another witness N.

This trial was concluded on 26 February and the defendants were fully acquitted because the court did not find convincing evidence that the defendants had committed the crime of minor property damage as charged by the public prosecutor.

14. Crime of simple offence against physical integrity, Case No. 177/Crm.S/2012/TDB.

Baucau District Court
Judge Composition : Single
Judge : Afonso Carmona
Public Prosecutor : Baltazar Ramos
Public Defender : Gregório de Lima.
Conclusion : Trial adjourned

On 20 February 2013 the Baucau District Court adjourned the trial of this case. The case was registered with the court as Case No. 177/Crm.S/2012/TDB. The defendant in this case ABR allegedly committed the crime against the victim CVF on 21 January 2012 in Gariuai, Baucau Sub-District, Baucau District.

The trial was adjourned because the victim and witness did not respond to the summons issued by the court. Therefore the court rescheduled the trial for 13 March 2013 at 10.00 am.

15. Domestic Violence, Case No. 92/Crm.S/2012/TDB.

Baucau District Court
Judge Composition : Single
Judge : Afonso Carmona
Public Prosecutor : Adérito Tilman
Public Defender : Sérgio Paulo Dias Quintas
Conclusion : Ongoing

A hearing was conducted on 26 February 2013 to hear testimony from the defendant in this case. The defendant in this case AR allegedly committed the crime against his wife AP. The case was registered with the court as Case No. 92/Crm.S/2012/TDB. The incident allegedly occurred on 15 March 2012 in Kota Baru, Baucau.

The public defender charged the defendant as the main perpetrator of the crime of a simple offence against physical integrity in violation of Article 145 of the Penal Code and Article 35 of the Law Against Domestic Violence.

In the indictment the public prosecutor stated that on 15 March 2012 the defendant and the victim had an argument about hiring a car. However without any clear reason the defendant

pushed a chair at the victim who fell to the ground. As a result of this act the victim suffered injuries and swelling to the hand and waist.

In his testimony to the court the defendant admitted that the facts alleged by the public prosecutor were true. Nevertheless, he stated that he regretted his actions and will not reoffend in the future.

After hearing the testimony of the defendant, the court requested to proceed to the final recommendations. In his final recommendations the public prosecutor requested for the court to sentence the defendant to 6 month's imprisonment to be suspended for one year.

The public defender requested for the court to consider the facts and give justice to his client in accordance with the actions of the defendant because the defendant had admitted all of the facts, expressed regret and was a first time offender.

After hearing the final recommendations the court adjourned the trial to read out its final decision on 12 March 2013 at 10.00am.

16. Crime against flora and fauna, Case No. 65/Crm.S/2012/TDB.

Baucau District Court

Judge Composition	: Single
Judges	: José Gonçalves
Public Prosecutor	: Adérito Tilman
Public Defenders	: Gil Amaral and (trainee lawyer)
Conclusion	: Trial adjourned

On 26 February 2013 the Baucau District Court adjourned the trial in a case involving a crime against flora and fauna because the defendants did not appear in court. This case involved two defendants AS and ECX who allegedly committed the crime against the State. This case allegedly occurred di Venilale Sub-District, Baucau District.

After confirming that the defendant were not present the court adjourned the trial until 16 April 2013.

17. Crime of simple offence against physical integrity, Case No. 91/Crm.S/2012/TDB.

Baucau District Court

Judge Composition	: Single
Judge	: José Gonçalves
Public Prosecutor	: Baltazar Ramos
Public Defender	: Muzari'a Amaral (trainee lawyer)
Conclusion	: Suspended sentence

A hearing in this case took place on 26 February 2013 to read out the court's decision in a case involving a simple offence against physical integrity. The case was registered with the court as Case No. 91/Crm.S/2012/BDC and involved the defendants Verónica Piedade de Sousa and Igildo Freitas who allegedly committed the crime against the victim Bemvinda da Costa. This case allegedly occurred on 1 October 2011 at the Venilale Junior High School, Venilale Sub-District, Baucau District.

In the aforementioned trial the court found that the defendants were guilty of committing the crime of a simple offence against physical integrity as set out in Article 145 of the Penal Code. The defendants pulled the hair of the victim and shoved her into a wall and the defendant Igildo kicked the victim in the back. The actions of the defendant caused the victim to suffer swelling to her head and back.

Based on the facts found by the court and after consideration of all of the circumstances surrounding this crime the court decided to sentence the defendant Verónica Piedade de Sousa to 2 month's imprisonment to be suspended for 1 year and to sentence the defendant Igildo Freitas to 3 month's imprisonment to be suspended for 1 year.

18. Crime of aggravated theft, Case No. 184/Crm.C/2012/TDB.

Baucau District Court	
Judge Composition	: Single
Judge	: António Fonseca Monteiro
Public Prosecutor	: Baltazar Ramos
Lawyers	: Lino Lopes and Marçal Guterres from <i>Educação Comunidade de Matebian Baucau</i> (ECM-Baucau)
Conclusion	: Trial adjourned

On 27 February 2013 the Baucau District Court adjourned a trial in a case of aggravated theft that occurred in April 2007 at the NGO-APETIL, Baucau.

The trial was adjourned until 26 June 2013, then 3 July and 10 July 2013. These adjournments took place because the two defendants AX and SGR had not been summoned. This occurred because the court did not know their place of residence.

This case involved the 6 defendants AX, SGR, JXF, JS, MJB and CS who allegedly committed the crime against 7 victims.

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